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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 09/880,777
Filing Date: June 15, 2001
Appellant(s): BARD ET AL.

Joseph E. Palys
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 06/03/2008 appealing from the Office action mailed 7/19/2007.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

NEW GROUND(S) OF REJECTION

Claim Rejections - 35 USC §101

1. 35 U.S.C. §101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

2. Claims 1-12, 14-28, 37-40, 42-46, and 117-118 are rejected under 35 U.S.C. §101 because the claimed invention is directed to non-statutory subject matter.

3. Based on Supreme Court precedent (*Diamond v. Diehr*, 450 U.S. 175, 184 (1981); *Parker v. Flook*, 437 U.S. 584, 588 n.9 (1978); *Gottschalk v. Benson*, 409 U.S. 63, 70 (1972); *Cochrane v. Deener*, 94 U.S. 780, 787-88 (1876)) and recent Federal Circuit decisions (*In Re Bilski*), §101 process must (1) be tied to another statutory class (such as a particular apparatus) or (2) transform underlying subject matter (such as an article or materials) to a different state or thing (the Supreme Court recognized that this test is not necessarily fixed or permanent and may evolve with technological advances. *Gottschalk v. Benson*, 409 U.S. 63, 71 (1972)).
4. If neither of these requirements is met by the claim(s), the method is not a patent eligible process under 35 U.S.C. §101.
5. In this particular case, regarding the first test, in performing the steps of the claimed subject matter recited in claims 1-12, 14-28, 37-40, 42-46, and 117-118, there is no requirement that a machine be used, thus the claims are not considered sufficiently tied to another statutory class. Regarding the second test, since the claimed subject matter may be performed using only human intelligence, the steps do not sufficiently transform the underlying subject matter to be statutory. Thus, to qualify as a 101 statutory method, the claim should positively recite the other statutory class (the thing or product) to which it is tied and should sufficiently transform the underlying subject matter.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

Sears Tests Starter Card (Card Fax News Brief Vol. 1997, n. 21, p. 1, January 28, 1997)

6,018,718

Walker et al

1-2000

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC §101

1. 35 U.S.C. §101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

2. Claims 1-12, 14-28, 37-40, 42-46, and 117-118 are rejected under 35 U.S.C. §101 because the claimed invention is directed to non-statutory subject matter.

3. Based on Supreme Court precedent (*Diamond v. Diehr*, 450 U.S. 175, 184 (1981); *Parker v. Flook*, 437 U.S. 584, 588 n.9 (1978); *Gottschalk v. Benson*, 409 U.S. 63, 70 (1972); *Cochrane v. Deener*, 94 U.S. 780, 787-88 (1876)) and recent Federal Circuit decisions (*In Re Bilski*), §101 process must (1) be tied to another statutory class (such as a particular apparatus) or (2) transform underlying subject matter (such as an article or materials) to a different state or thing (the Supreme Court recognized that this

test is not necessarily fixed or permanent and may evolve with technological advances.
Gottschalk v. Benson, 409 U.S. 63, 71 (1972)).

4. If neither of these requirements is met by the claim(s), the method is not a patent eligible process under 35 U.S.C. §101.

In this particular case, regarding the first test, in performing the steps of the claimed subject matter recited in claims 1-12, 14-28, 37-40, 42-46, and 117-118, there is no requirement that a machine be used, thus the claims are not considered sufficiently tied to another statutory class. Regarding the second test, since the claimed subject matter may be performed using only human intelligence, the steps do not sufficiently transform the underlying subject matter to be statutory. Thus, to qualify as a 101 statutory method, the claim should positively recite the other statutory class (the thing or product) to which it is tied and should sufficiently transform the underlying.

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
 2. Ascertaining the differences between the prior art and the claims at issue.
 3. Resolving the level of ordinary skill in the pertinent art.
 4. Considering objective evidence present in the application indicating obviousness or nonobviousness.
6. Claims 1-12, 14-28, 30-40, 42-58, 60-88 and 90-120 are rejected under 35 U.S.C. 103(a) as being unpatentable over **Sears Tests Starter Card** (Sears hereinafter, Card Fax News Brief Vol. 1997, n. 21, p. 1, January 28, 1997) in view of Walker et al (Walker hereinafter, US PAT:6,018,718).

Re claim 1. Sears discloses a method for providing a credit account to a customer of an account issuer that provides a starter credit account associated with starter credit account parameters and a standard credit account associated with standard credit account parameters more favorable than the starter credit account parameters, comprising: **receiving** a request for the standard credit account from the customer (i.e., the new low credit approach will undoubtedly save many of those denied applicants who do not fit into sears existing modeling programs pg 1, lines 36-39); **providing** a starter credit account in place of the standard credit account to the customer (i.e., sears plan to roll out a low credit line starter card by June, the card which will feature a smaller credit limit than the traditional sears card, pg 1 lines 17-25); **monitoring** the customer's activities associated with the starter credit account during a trial period to determine whether the customer has satisfied predetermined criteria (i.e., the retailer expects most new card holders to pay on time and eventually have their credit limits raised, see page 1, lines 30-34, this process inherently involves monitoring); and **upgrading** at least one of the starter credit account parameters to match at least one of the standard credit

account parameters when the customer has satisfied the predetermined criteria (i.e., new customers are expected to pay on time and eventually have their credit limits raised, see pg 1 lines 30-35). Sears does not explicitly disclose **modifying** the duration of the trial period based on the monitored customer's activities associated with the starter credit account. However, Walker discloses **modifying** the duration of the trial period based on the monitored customer's activities associated with the starter credit account (i.e., establishing a second period to incent the card holder to exceed his present performance, see col.11 lines 30-34). Thus, it would have been obvious to one of ordinary skill in the art to combine the teachings of Sears and Walker to incent the card holder to exceed his present performance.

Re claim 2. Sears discloses the method wherein the starter credit account parameters include at least a starter credit limit (i.e., \$1000.00, see lines 23-25). Sears does not explicitly disclose wherein monitoring the customer's activities comprises: determining whether the customer has an outstanding balance associated with the starter credit limit; and determining whether the customer has made a payment toward the outstanding balance. However, Walker discloses wherein monitoring the customer's activities comprises: determining whether the customer has an outstanding balance (i.e., quarterly outstanding balance, see fig.4 element 414) associated with the starter credit limit; and determining whether the customer has made a payment toward the outstanding balance (promptness of payments, see col.7 lines 60-67). Thus, it would have been obvious to one of ordinary skill in the art to

incorporate the teachings of walker into the starter card of Sears in order to better manage individual accounts to maximize profit per account.

Re claim 3. Sears does not explicitly disclose the method, wherein determining whether the customer has made a payment further comprises: determining whether the customer has made the payment within an acceptable period of time. However, Walker discloses the method, wherein determining whether the customer has made a payment further comprises: determining whether the customer has made the payment within an acceptable period of time. (Promptness of payments, see col.7 lines 60-67). Thus, it would have been obvious to one of ordinary skill in the art to incorporate the teachings of walker into the starter card of Sears in order to better manage individual accounts to maximize profit per account.

Re claim 4. Sears further discloses the method, wherein upgrading at least one of the starter credit account parameters comprises: increasing a starter credit limit associated with the starter credit account when the customer has satisfied the predetermined criteria (i.e., the retailer expects most new card holders to pay on time and eventually have their credit limits raised, see page 1, lines 30-34).

Re claim 5. Sears further discloses the method as stated supra, wherein upgrading at least one of the starter credit account parameters comprises: increasing a starter credit limit associated with the starter credit account. Sears does not expressly disclose adjusting an interest rate associated with the starter credit account when the customer

has satisfied the predetermined criteria during the trial period. However, Walker discloses adjusting an interest rate associated with the credit account when the customer has satisfied the predetermined criteria during the trial period (i.e., reward terms, see APR, fig.4 ELEMENT 420). Thus, it would have been obvious to one of ordinary skill in the art to incorporate the teachings of walker into the starter card of Sears in order to encourage customers to keep their account in good standing.

Re claim 6. Sears discloses the method wherein the predetermined criteria includes at least one of making a predetermined number of consecutive on time payments, and not exceeding the starter credit limit (i.e., the retailer expects most new card holders to pay on time and eventually have their credit limits raised, see page 1, lines 30-34).

Re claim 7. Neither Sears nor Walker expressly discloses the method wherein the step of upgrading at least one of the starter credit account parameters is replaced with: downgrading at least one of the starter credit account parameters based on the monitoring. However, official notice is taken that it is old and well known in the credit card business world that if the credit card holder puts his account in poor standing, the credit card account of such a holder would be downgraded i.e., reduced credit limit, higher interest rate etc. For example, in 1997, I applied for my first credit card through MBNA America. On the credit card application, I requested for \$1500 credit limit. However, after my application was processed and approved, the credit limit offered to me was \$800. No sooner had I received the credit card than I called MBNA to find out why they gave me a credit limit of \$800 as opposed to \$1500, their reason was that

based on the mechanism they use to extend credit limit to new customers, \$800 was the maximum amount they could extend to me at this time, and that is subject to change with time depending on the standing of my account. For the first six months, my account was in poor standing, and I received a call from MBNA informing me that due to my poor account standing, my APR has been raised and the fact that I was over my credit limit, my charging right has been suspended. I worked tirelessly to bring my account current, and I was able to achieve this in three months. About four months thereafter, I received another call from MBNA, offering to extend my credit limit from \$800 to \$1500, and at the same time reducing my annual APR. This personal story constitutes the applicant disclosure stated supra (i.e., upgrading account parameters if the account is kept in good standing and downgrading the account if the account is kept in poor standing, which is old and well-known in the art). Thus it would have been obvious to one of ordinary skill in the art to incorporate the old and well known penalties stated supra in Sears to discourage customers from putting their accounts in poor standing. Re claim 8. Neither Sears nor Walker expressly discloses the method, downgrading further comprises: determining that the customer has not met a predetermined criteria during the trial period based on the monitoring; and restarting the trial period. However, official notice is taken that it is old and well known in the credit card business world that if the credit card holder puts his account in poor standing, the credit card account of such a holder would be downgraded i.e., reduced credit limit, higher interest rate etc. For example, in 1997, I applied for my first credit card through MBNA America. On the credit card application, I requested for \$1500 credit limit. However, after my application

was processed and approved, the credit limit offered to me was \$800. No sooner had I received the credit card than I called MBNA to find out why they gave me a credit limit of \$800 as opposed to \$1500, their reason was that based on the mechanism they use to extend credit limit to new customers, \$800 was the maximum amount they could extend to me at this time, and that is subject to change with time depending on the standing of my account. For the first six months, my account was in poor standing, and I received a call from MBNA informing me that due to my poor account standing, my APR has been raised and the fact that I was over my credit limit, my charging right has been suspended. I worked tirelessly to bring my account current, and I was able to achieve this in three months. About four months thereafter, I received another call from MBNA, offering to extend my credit limit from \$800 to \$1500, and at the same time reducing my annual APR. This personal story constitutes the applicant disclosure stated supra, which is old and well-known in the art (i.e., upgrading account parameters if the account is kept in good standing and downgrading the account if the account is kept in poor standing, which is old and well-known in the art). Thus it would have been obvious to one of ordinary skill in the art to incorporate the old and well known penalties stated supra in Sears to discourage customers from putting their accounts in poor standing. Re claim 9. Neither Sears nor Walker expressly discloses the method of downgrading further comprises: determining that the customer has not met a predetermined criteria during the trial period based on the monitoring; preventing use of the starter credit account to purchase goods and/or services; increasing an interest rate associated with the starter credit account; and accessing penalty fees to the starter credit account.

However, official notice is taken that it is old and well known in the credit card business world that if the credit card holder puts his account in poor standing, the credit card account of such a holder would be downgraded i.e., reduced credit limit, higher interest rate etc. For example, In 1997, I applied for my first credit card through MBNA America. On the credit card application, I requested for \$1500 credit limit. However, after my application was processed and approved, the credit limit offered to me was \$800. No sooner had I received the credit card than I called MBNA to find out why they gave me a credit limit of \$800 as opposed to \$1500, their reason was that based on the mechanism they use to extend credit limit to new customers, \$800 was the maximum amount they could extend to me at this time, and that is subject to change with time depending on the standing of my account. For the first six months, my account was in poor standing, and I received a call from MBNA informing me that due to my poor account standing, my APR has been raised and the fact that I was over my credit limit, my charging right has been suspended. I worked tirelessly to bring my account current, and I was able to achieve this in three months. About four months thereafter, I received another call from MBNA, offering to extend my credit limit from \$800 to \$1500, and at the same time reducing my annual APR. This personal story constitutes the applicant disclosure stated supra, which is old and well-known in the art (i.e., upgrading account parameters if the account is kept in good standing and downgrading the account if the account is kept in poor standing, which is old and well-known in the art). Thus it would have been obvious to one of ordinary skill in the art to incorporate the old and well

known penalties stated supra in Sears to discourage customers from putting their accounts in poor standing.

Re claim 10. Sears discloses a method for providing a credit account to a customer of a credit issuer that provides a starter credit account associated with starter credit account parameters and a standard credit account associated with standard credit account parameters more favorable than the starter credit account parameters, comprising: **providing** a starter credit account to a customer (i.e., sears plan to roll out a low credit line starter card by June, the card which will feature a smaller credit limit than the traditional sears card, pg 1 lines 17-25), wherein the customer is not eligible to receive a standard credit account; **monitoring** the customer's activities associated with the starter credit account during a trial period to determine whether the customer has satisfied predetermined criteria during the trial period (i.e., the retailer expects most new card holders to pay on time and eventually have their credit limits raised, see page 1, lines 30-34, this process inherently involves monitoring); and **modifying** the starter credit account parameters based on the monitoring (i.e., the retailer expects most new card holders to pay on time and eventually have their credit limits raised, see page 1, lines 30-34) (see pg 1 of Sears), wherein modifying includes upgrading at least one of the starter credit account parameters to match at least one of the standard credit account parameters when the customer has satisfied the predetermined criteria during the trial period (i.e., new customers are expected to pay on time and eventually have their credit limits raised, see pg 1 lines 30-35). Sears does not explicitly disclose **notifying** the customer of unsatisfied predetermined criteria during the trial period. However, Walker

makes this disclosure (i.e., As shown, at step 618, CCI 200 outputs a periodic account statement to inform card holder 112 of the reward offer. The periodic account statement includes the performance target, the target period and the reward terms to induce card holder 112 to behave in a manner prescribed by the credit card issuer and achieve the communicated performance target during the target period. Although the periodic statement of the present embodiment is a written communication between the issuer and the card holder, the communication could take any number of forms including updating a database accessible by the card holder or transmitting an electronic or facsimile representation of a periodic statement, see col9 lines 42-55, also see fig.6 elements 624 and 628). Thus it would have been obvious to one of ordinary skill in the art to combine the teachings of Sears and Walker to inform the card holder of their accounts status.

Re claim 11. Claim 11 recites similar limitations to claim 2, and thus rejected using the same art and rationale in the rejection of claim 2.

Re claim 12. Claim 12 recites similar limitations to claim 3, and thus rejected using the same art and rationale in the rejection of claim 3.

Re claim 14. Claim 14 recites similar limitations to claim 5, and thus rejected using the same art and rationale in the rejection of claim 5.

Re claim 15. Claim 15 recites similar limitations to claim 6, and thus rejected using the same art and rationale in the rejection of claim 6.

Re claim 16. Claim 16 recites similar limitations to claim 7, and thus rejected using the same art and rationale in the rejection of claim 7.

Re claims 17. Claims 17 recites similar limitations to claim 8, and thus rejected using the same art and rationale in the rejection of claim 8.

Re claims 18. Claims 18 recite similar limitations to claim 9, and thus rejected using the same art and rationale in the rejection of claim 9.

Re claim 19. Sears further discloses a method for providing a credit account to a customer of a credit issuer that provides a starter credit account associated with starter credit account parameters and a standard credit account associated with standard credit account parameters more favorable than the starter credit account parameters, comprising: determining a group of customers with existing credit histories who have not previously applied for the standard credit account and are eligible for the starter credit account, wherein the customers included in the group each have a credit profile (i.e., consumers with very thin and non-existent credit histories, pg 1 lines 18-20) that prevents the customers from obtaining the standard credit account; upgrading the account parameters associated with the ranked customer based on the determination (i.e., the credit limit is raised pg 1 lines 32-33). Sears does not explicitly disclose ranking the customers included in the group providing a starter credit account to each customer included in the group, wherein parameters associated with each starter credit account vary based on the rank of each customer; determining a trial period for each ranked customer; determining, for each ranked customer, a predetermined criteria that the customer must satisfy for the starter credit account parameters to be upgraded and for each ranked customer: determining whether the ranked customer has met the predetermined criteria during the trial period. However,

Walker discloses ranking the customers included in the group providing a starter credit account to each customer included in the group, wherein parameters associated with each starter credit account vary based on the rank of each customer; determining a trial period for each ranked customer; determining, for each ranked customer, a predetermined criteria that the customer must satisfy for the starter credit account parameters to be upgraded and for each ranked customer: determining whether the ranked customer has met the predetermined criteria during the trial period (see col.7 lines 14-67). Thus it would have been obvious to one of ordinary skill in the art to incorporate the teachings of Walker into the starter card of Sears to better manage individual accounts to maximize profit per account.

Re claim 20. Claim 20 recites similar limitations to claim 4, and thus rejected using the same art and rationale in the rejection of claim 4.

Re claim 21. Claim 21 recites similar limitations to claim 5, and thus rejected using the same art and rationale in the rejection of claim 5.

Re claim 22. Sears further discloses the method as stated supra wherein adjusting the account parameters comprises: adjusting the account parameters to reflect parameters equivalent to parameters associated with the standard credit account when the customer has met the predetermined criteria (i.e., adjust the credit limit, see lines 32-33).

Re claim 23. Claim 23 recites similar limitations to claim 8, and thus rejected using the same art and rationale in the rejection of claim 8.

Re claim 24. The limitation in claim 24 is one of the limitations recited in claim 9 above, and thus rejected using the same art and rationale in the rejection of claim 9.

Re claim 25. Claim 25 recites a limitation that is one of the limitations recited in claim 19, and thus rejected using the same art and rationale in the rejection of claim 19.

Re claim 26. Sears further discloses the method wherein the predetermined criteria includes at least one of making a number of consecutive on-time payments, and not exceeding a credit limit associated with the starter credit account (i.e., The retailer expects cardholders to pay on time, see lines 30-35).

Re claim 27. Claim 27 recites similar limitations to claim 26 and thus rejected using the same art and rationale as in claim 26.

Re claim 28. Sears further discloses the method for providing credit accounts, comprising: receiving a request from a customer for a first credit account associated with a first account parameters included a first credit limit and a first interest rate (see response to claim 1); providing to the customer a second credit account associated with second account parameters including a second credit limit and a second interest rate, wherein the second credit limit is lower than the first credit limit (i.e., the card will feature a smaller credit limit than the traditional Sears card, sears tested three, see lines 20-26); monitoring the second credit account to determine whether the customer has made a predetermined number of consecutive on time payments; and changing the second credit limit to a third credit limit when it is determined that the customer has made the predetermined number of on-time payments associated with the second credit account (i.e., the credit limit can be raised, see pg 1 lines 30-35) (see Sears pg 1) wherein the

third credit limit is based on a predetermined amount based on a number of on-time payments made by the customers. Sears does not explicitly disclose notifying the customer of a third credit limit while the customer is provided the Second, credit limit, the notifying; including information reflecting that the third credit limit is obtainable by making a predetermined number of consecutive on time payments and wherein the third credit limit is higher than the second credit limit and lower than the first credit limit.

However, Walker discloses notifying the customer of a third credit limit while the customer is provided the Second, credit limit (i.e., transmit reward offers to card holders, see col.4 lines 40-65), the notifying; including information reflecting that the third credit limit is obtainable by making a predetermined number of consecutive on time payments and wherein the third credit limit is higher than the second credit limit and lower than the first credit limit (i.e., performance target, see col.5 lines 60-67). Thus, it would have been obvious to combine the teachings of Sears and Walker in order to better manage individual accounts to maximize profit per account.

Re claim 30. Sears further discloses a system for providing a starter credit account, comprising: a credit issuer for providing credit accounts including a starter credit account associated with starter credit account parameters (see pg 1, lines 1-10) and a standard credit account associated with standard credit account parameters that are more favorable than the starter credit account parameters (i.e., traditional sears card pg 1, lines 22-24), wherein the starter credit account is provided to a trial customer who is not eligible to obtain the standard credit account (see lines 16-29), the credit issuer comprising: a monitor process for monitoring the starter credit account to determine

whether the trial customer has met predetermined criteria associated with the starter credit account during a trial period and adjusting the starter credit account parameters based on the determination (i.e., the retailer expects most new card holders to pay on time and eventually have their credit limits raised, see page 1, lines 30-34, this process inherently involves monitoring); a first memory for storing credit account information associated with standard credit account customers of the credit issuer; and a second memory for storing starter credit account information associated with the trial customer, wherein the credit issuer loads the starter credit account information stored in the second memory into the first memory after the starter credit account parameters associated with the starter credit account have been adjusted based on the determination (i.e., if this is a performance based training-wheels approach to credit, it is inherent that the individual customer's account would be monitored and the customer's account information would be stored and loaded into corresponding memory). Sears does not explicitly disclose a trial period **modifying process for modifying** the duration of the trial period based on the monitored customer's activities associated with the starter credit account. However, Walker discloses **modifying** the duration of the trial period based on the monitored customer's activities associated with the starter credit account (i.e., establishing a second period to incent the card holder to exceed his present performance, see col.11 lines 30-34). Thus, it would have been obvious to one of ordinary skill in the art to combine the teachings of Sears and Walker to incent the card holder to exceed his present performance.

Re claim 31. Claim 31 recites similar limitations to claim 4, and thus rejected using the same art and rationale in the rejection of claim 4.

Re claims 32, 33. Claims 32 and 33 recite similar limitations to claim 5, and thus rejected using the same art and rationale in the rejection of claim 5.

Re claim 34. Sears does not explicitly disclose the system wherein the credit limit is reduced to zero. However, it is common sense to know that if the credit limit is reduced to Zero, the customer is basically prevented from using his starter credit account to purchase goods and/or services. Since this is one of the limitations recited in claim 9, thus claim 34 is rejected using the same rationale given for the rejection of that limitation in claim 9 above.

Re claim 35. Claim 35 recites similar limitations to claim 8, and thus rejected using the same art and rationale in the rejection of claim 8.

Re claim 36. Claim 36 recites limitations that are part of the limitations recited in claim 19, and thus rejected using the same art and rationale in the rejection of those limitations in claim 19 above.

Re claims 37 and 38. Sears discloses a process for monitoring a starter credit account associated with a customer who is not eligible to receive a standard credit account from a credit issuer, wherein the standard credit account is associated with standard credit account parameters that are more favorable than starter credit account parameters associated with the starter credit account (i.e., the new low credit approach will undoubtedly save many of those denied applicants who do not fit into sears existing modeling programs pg 1, lines 36-39), the process comprising: a process for

periodically monitoring activity associated with the starter credit account for a determined trial period (i.e., the retailer expects most new card holders to pay on time and eventually have their credit limits raised, see pg 1, lines 30-40, this process inherently involves monitoring); a process for determining whether predetermined criteria has been met based on the monitored activity during the trial period, a process for increasing a credit limit associated with the starter credit account based on the determination that the predetermined criteria has been met (i.e., new customers are expected to pay on time and eventually have their credit limits raised, see pg 1 lines 30-35). Sears does not explicitly disclose a process for notifying customers of an increased credit limit that will be provided to the customer if the customer satisfies predetermined criteria; a process for notifying the customer of the predefined criteria the customer must satisfy to obtain the increased credit limit. Walker discloses a process for notifying customers of an increased credit limit that will be provided to the customer if the customer satisfies predetermined criteria; a process for notifying the customer of the predefined criteria the customer must satisfy to obtain the increased credit limit (i.e., As shown, at step 618, CCI 200 outputs a periodic account statement to inform card holder 112 of the reward offer. The periodic account statement includes the performance target, the target period and the reward terms to induce card holder 112 to behave in a manner prescribed by the credit card issuer and achieve the communicated performance target during the target period. Although the periodic statement of the present embodiment is a written communication between the issuer and the card holder, the communication could take any number of forms including updating a

database accessible by the card holder or transmitting an electronic or facsimile representation of a periodic statement, see col9 lines 42-55, also see fig.6 elements 624 and 628; transmit reward offers to card holders, see col.4 lines 40-65); and a process for resetting the trial period when the activity reflects that the customer has not met the predetermined criteria (see col.11 lines 1-44). Thus, it would have been obvious to one of ordinary skill in the art to combine the teachings of Sears and Walker in order to better manage individual accounts to maximize profit per account.

Re claim 39. Sears further disclose the process wherein the process for determining whether a predetermined criteria has been met based on the monitored activity further comprises: a process for determining that the customer has made a predetermined number of on time payments associated with the starter credit account (i.e., the retailer expects the cardholders to pay on time, see lines 30-36).

Re claim 40. Claim 40 recites similar limitations to claim 9, and thus rejected using the same art and rationale in the rejection of claim 9.

Re claim 42. Claim 42 recites similar limitation to claim 10, and thus rejected using the same art and rationale in the rejection of claim 10.

Re claim 43. Neither Sears nor Walker explicitly discloses the method wherein the second predetermined criteria is the same as the predetermined criteria. However, one of Sears predefined criteria is on time payment. Thus if, during the first trial, Sears starter credit cardholders fail to meet this predefined criterion and Sears choose to give these cardholders a second chance, it is common sense to know that these cardholders would be subject to the same predefined criterion they fail to meet in the first trial to see

if they would make it in the second trial (this is what second chance is all about). Clearly in this case, the second predetermined criteria is the same as the predetermined criteria.

Re claim 44. Neither Sears nor Walker explicitly discloses the method, wherein the second predetermined criteria is not the same as the predetermined criteria. However, one of Sears predefined criteria is on time payment. Thus if, during the first trial period, Sears starter credit cardholders make their payments on time, but fail to meet other predefined criteria (i.e., keep their credit limits under control), and Sears choose to give these cardholders a second chance, it is common sense to know that these cardholders would be subject to meet those predefined criteria they fail to meet in the first trial (i.e., keep their credit limits under control). Clearly, in this case, the second predetermined criteria is not the same as the predetermined criteria.

Re claim 45. Sears further discloses the method, wherein modifying the starter credit account parameters based on the monitoring comprises: increasing a credit limit associated with the starter credit account (i.e., cardholders eventually have their credit limit raised, pg 1 lines 30-35).

Re claim 46. Claim 46 recites similar limitations to claim 45, and thus rejected using the same art and rationale in the rejection of claim 45.

Re claim 47. Claim 47 recites similar limitations to claim 1, and thus rejected using the same art and rationale in the rejection of claim 1.

Re claim 48. Claim 48 recites similar limitations to claim 2, and thus rejected using the same art and rationale in the rejection of claim 2.

Re claim 49. Claim 49 recites similar limitations to claim 3, and thus rejected using the same art and rationale in the rejection of claim 3.

Re claim 50. Claim 50 recites similar limitations to claim 4, and thus rejected using the same art and rationale in the rejection of claim 4.

Re claim 51. Claim 51 recites similar limitations to claim 5, and thus rejected using the same art and rationale in the rejection of claim 5.

Re claim 52. Claim 52 recites similar limitations to claim 5, and thus rejected using the same art and rationale in the rejection of claim 5.

Re claim 53. Claim 53 recites similar limitations to claim 7, and thus rejected using the same art and rationale in the rejection of claim 7.

Re claim 54. Claim 54 recites similar limitations to claim 8, and thus rejected using the same art and rationale in the rejection of claim 8.

Re claim 55. Claim 55 recites similar limitations to claim 9, and thus rejected using the same art and rationale in the rejection of claim 9.

Re claim 56. Claim 56 recites similar limitations to claim 10, and thus rejected using the same art and rationale in the rejection of claim 10.

Re claim 57. Claim 57 recites similar limitations to claim 2, and thus rejected using the same art and rationale in the rejection of claim 2.

Re claim 58. Claim 58 recites similar limitations to claim 3, and thus rejected using the same art and rationale in the rejection of claim 3.

Re claim 60. Claim 60 recites similar limitations to claim 5, and thus rejected using the same art and rationale in the rejection of claim 5.

Re claim 61. Claim 61 recites similar limitations to claim 6, and thus rejected using the same art and rationale in the rejection of claim 6.

Re claim 62. Claim 62 recites similar limitations to claim 7, and thus rejected using the same art and rationale in the rejection of claim 7.

Re claim 63. Claim 63 recites similar limitations to claim 8, and thus rejected using the same art and rationale in the rejection of claim 8.

Re claim 64. Claim 64 recites similar limitations to claim 9, and thus rejected using the same art and rationale in the rejection of claim 9.

Re claim 65. Claim 65 recites similar limitations to claim 19, and thus rejected using the same art and rationale in the rejection of claim 19.

Re claim 66. Claim 66 recites similar limitations to claim 4, and thus rejected using the same art and rationale in the rejection of claim 4.

Re claim 67. Claim 67 recites similar limitations to claim 5, and thus rejected using the same art and rationale in the rejection of claim 5.

Re claim 68. Claim 68 recites similar limitations to claim 22, and thus rejected using the same art and rationale in the rejection of claim 22.

Re claim 69. Claim 69 recites similar limitations to claim 23, and thus rejected using the same art and rationale in the rejection of claim 23.

Re claim 70. Claim 70 recites similar limitations to claim 24, and thus rejected using the same art and rationale in the rejection of claim 24.

Re claim 71. Claim 71 recites similar limitations to claim 25, and thus rejected using the same art and rationale in the rejection of claim 25.

Re claim 72. Claim 72 recites similar limitations to claim 26, and thus rejected using the same art and rationale in the rejection of claim 26.

Re claim 73. Claim 73 recites similar limitations to claim 27, and thus rejected using the same art and rationale in the rejection of claim 27.

Re claim 74. Claim 74 recites similar limitations to claim 28, and thus rejected using the same art and rationale in the rejection of claim 28.

Re claim 75. Claim 75 recites similar limitations to claim 29, and thus rejected using the same art and rationale in the rejection of claim 29.

Re claim 76. Sears discloses a computer-readable medium including instructions for performing a method, when executed by a processor, for providing credit accounts, the method comprising: receiving a request from a customer for a first credit account associated with a first account parameters included a first credit limit and a first interest rate (i.e., the traditional sears card, lines 20-29); providing to the customer a second credit account associated with second account parameters including a second credit limit (i.e., low-credit line starter card, see lines 17-20); and a second interest rate; monitoring the second credit account to determine whether the customer has performed at least one of made a predetermined number of consecutive on time payments (i.e., The retailer expects the cardholders to pay on time, lines 30-35, this inherently involves monitoring) and exceeded the second credit limit (see Sears lines 1-40). Sears does not expressly disclose changing the second interest rate to a third interest rate that is higher than the first interest rate, when it is determined that the customer has made the predetermined number of on-time payments associated with the second credit account.

However, Walker discloses changing the second interest rate to a third interest rate that is higher than the first interest rate, when it is determined that the customer has made the predetermined number of on-time payments associated with the second credit account (i.e., REWARD OFFER, reduced APR, see table 11, col.9 lines 1-14). Thus it would have been obvious to one of ordinary skill in the art to incorporate the teachings of Walker into the Sears to encourage customers to keep their account in good standing.

Re claim 77. Claim 77 recites similar limitations to claim 1, and thus rejected using the same art and rationale in the rejection of claim 1.

Re claim 78. Claim 78 recites similar limitations to claim 2, and thus rejected using the same art and rationale in the rejection of claim 2.

Re claim 79. Claim 79 recites similar limitations to claim 3, and thus rejected using the same art and rationale in the rejection of claim 3.

Re claim 80. Claim 80 recites similar limitations to claim 4, and thus rejected using the same art and rationale in the rejection of claim 4.

Re claim 81. Claim 81 recites similar limitations to claim 5, and thus rejected using the same art and rationale in the rejection of claim 5.

Re claim 82. Claim 82 recites similar limitations to claim 6, and thus rejected using the same art and rationale in the rejection of claim 6.

Re claim 83. Claim 83 recites similar limitations to claim 7, and thus rejected using the same art and rationale in the rejection of claim 7.

Re claim 84. Claim 84 recites similar limitations to claim 8, and thus rejected using the same art and rationale in the rejection of claim 8.

Re claim 85. Claim 85 recites similar limitations to claim 9, and thus rejected using the same art and rationale in the rejection of claim 9.

Re claim 86. Claim 81 recites similar limitations to claim 10, and thus rejected using the same art and rationale in the rejection of claim 10.

Re claim 87. Claim 81 recites similar limitations to claim 11, and thus rejected using the same art and rationale in the rejection of claim 11.

Re claim 88. Claim 88 recites similar limitations to claim 12, and thus rejected using the same art and rationale in the rejection of claim 12.

Re claim 90. Claim 90 recites similar limitations to claim 14, and thus rejected using the same art and rationale in the rejection of claim 14.

Re claim 91. Claim 91 recites similar limitations to claim 15, and thus rejected using the same art and rationale in the rejection of claim 15.

Re claim 92. Claim 92 recites similar limitations to claim 16, and thus rejected using the same art and rationale in the rejection of claim 16.

Re claim 93. Claim 93 recites similar limitations to claim 17, and thus rejected using the same art and rationale in the rejection of claim 17.

Re claim 94. Claim 94 recites similar limitations to claim 18, and thus rejected using the same art and rationale in the rejection of claim 18.

Re claim 95. Claim 95 recites similar limitations to claim 19, and thus rejected using the same art and rationale in the rejection of claim 19.

Re claim 96. Claim 96 recites similar limitations to claim 4, and thus rejected using the same art and rationale in the rejection of claim 4.

Re claim 97. Claim 97 recites similar limitations to claim 5, and thus rejected using the same art and rationale in the rejection of claim 5.

Re claim 98. Claim 98 recites similar limitations to claim 22, and thus rejected using the same art and rationale in the rejection of claim 22.

Re claim 99. Claim 99 recites similar limitations to claim 23, and thus rejected using the same art and rationale in the rejection of claim 23.

Re claim 100. Claim 100 recites similar limitations to claim 24, and thus rejected using the same art and rationale in the rejection of claim 24.

Re claim 101. Claim 101 recites similar limitations to claim 25, and thus rejected using the same art and rationale in the rejection of claim 25.

Re claim 102. Claim 102 recites similar limitations to claim 26, and thus rejected using the same art and rationale in the rejection of claim 26.

Re claim 103. Claim 103 recites similar limitations to claim 26, and thus rejected using the same art and rationale in the rejection of claim 26.

Re claim 104. Claim 104 recites similar limitations to claim 28, and thus rejected using the same art and rationale in the rejection of claim 28.

Re claim 105. Claim 105 recites similar limitations to claim 29, and thus rejected using the same art and rationale in the rejection of claim 29.

Re claim 106. Claim 106 recites similar limitations to claim 76, and thus rejected using the same art and rationale in the rejection of claim 76.

Re claim 107. Claim 107 recites similar limitations to claim 42, and thus rejected using the same art and rationale in the rejection of claim 42.

Re claims 108. Claims 108 recites similar limitations to claim 43, and thus rejected using the same art and rationale in the rejection of claim 43.

Re claim 109 . Claims 109 recites similar limitations to claim 44, and thus rejected using the same art and rationale.

Re claim 110. Claim 110 recites similar limitations to claim 45, and thus rejected using the same art and rationale in the rejection of claim 45.

Re claim 111. Claim 111 recites similar limitations to claim 46, and thus rejected using the same art and rationale in the rejection of claim 46.

Re claim 112. Claim 112 recites similar limitations to claim 42, and thus rejected using the same art and rationale in the rejection of claim 42.

Re claim 113. Claim 113 recites similar limitations to claim 43, and thus rejected using the same art and rationale in the rejection of claim 43.

Re claim 114. Claim 114 recites similar limitations claim 44, and thus rejected using the same art and rationale in the rejection of claim 44.

Re claim 115. Claim 115 recites similar limitations to claim 45, and thus rejected using the same art and rationale in the rejection of claim 45.

Re claim 116. Claim 116 recites similar limitations to claim 46, and thus rejected using the same art and rationale in the rejection of claim 46.

Re claim 117. Claim 117 recites similar limitations to claim 76, and thus rejected using the same art and rationale in the rejection of claim 76.

Re claim 118. Sears discloses the method wherein providing a starter credit account in place of the standard credit account includes: providing the starter credit account in response to the request for the standard credit account received from the customer (i.e., the new low credit approach will undoubtedly save many of those denied applicants who do not fit into sears existing modeling programs pg 1, lines 36-39, also see "sears plan to roll out a low credit line starter card by June, the card which will feature a smaller credit limit than the traditional sears card", pg 1 lines 17-25).

Re claims 119-120. Claims 119-120 recite similar limitations to claim 118 and thus rejected using the same art and rationale as in claim 118 above.

(10) Response to Argument

In response to the appellant's argument concerning the 35 USC 103 (a) rejection of claims 1-9, 30-36, 47-55, 77-85, and 118-120. The appellant argues in substance that neither Sears nor Walker teaches the limitation "modifying the duration of the trial period based on the monitored customer's activities associated with the starter credit account." It is true that Sears fails to explicitly teach this limitation. However, the secondary reference, Walker compensates for the incomplete teachings of Sears. Walker teaches establishing a second period to encourage the card holder to exceed his present performance (see col.11 lines 30-34). Thus the teaching "establishing a second period..." as disclosed by Walker is tantamount to the claimed limitation "modifying the duration of the trial period.....," as disclosed by the applicant. Thus, it

would have been obvious to one of ordinary skill in the art to combine the teachings of Sears and Walker to entice the card holder to exceed his present performance.

In response to the appellant's argument concerning the 35 USC 103 (a) rejection

of claims 10-12, 14-18, 56-58, 60-64, 86-88, and 90-94. The appellant further argues

that neither Sears nor Walker discloses the claimed limitation " notifying the customer of unsatisfied predetermined criteria during the trial period." It is true that Sears fails to teach the above-mentioned claimed limitation. However, the secondary reference,

Walker compensates for the incomplete teachings of Sears. Walker teaches that "CCI 200 outputs a periodic account statement to inform card holder 112 of the reward offer.

The periodic account statement includes the performance target, the target period and the reward terms to induce card holder 112 to behave in a manner prescribed by the credit card issuer and achieve the communicated performance target during the target period. Although the periodic statement of the present embodiment is a written

communication between the issuer and the card holder, the communication could take any number of forms including updating a database accessible by the card holder or transmitting an electronic or facsimile representation of a periodic statement, see col9 lines 42-55, also see fig.6 elements 624 and 628. The issuance of a periodic account statement, taught by Walker, is akin to the limitation " notifying the customer of unsatisfied predetermined criteria during the trial period," as disclosed by the applicant.

Thus it would have been obvious to one of ordinary skill in the art to combine the teachings of Sears and Walker to inform the cardholder of their accounts status.

In response to the appellant's argument concerning the 35 USC 103 (a) rejection of claims 19-27, 65-73 and 95-103. The appellant further argues that Sears fails to disclose the claimed limitation "determining a group of customers with existing credit histories who have not previously applied for the standard credit account and are eligible for the starter credit account," Contrary to the appellant's assertion, Sears makes this disclosure (i.e., Sears plans to roll out a low credit line starter card by JuneSears is targeting the card, which it tested nationwide for several months, toward consumers with "very thin" or nonexistent credit histories, pg 1 lines 18-20). The examiner contends that consumers with non-existed credit histories certainly have not previously applied for the standard credit account, and Sears teachings of targeting its cards towards these consumers (i.e., people with very thin" or nonexistent credit histories) is akin to applicant's claimed limitation of "determining a group of customers with existing credit histories who have not previously applied for the standard credit account and are eligible for the starter credit account." The applicant further argues that the prior art of record fails to disclose the limitation "ranking the customers included in the group" and "providing a starter credit account to each customer included in the group, wherein parameters associated with each starter credit account vary based on the rank of each customer." Contrary to the applicant's assertion, Walker teaches the use of risk/revenue score to assign ranking to individuals and to help credit card issuers to predict delinquencies, bankruptcies, and the extent and timing of monthly payments. By so doing, credit card issuers would be able to target individual accounts with the appropriate offer (i.e., parameters) (see col.7 lines 35-65).

In response to the appellant's argument concerning the 35 USC 103 (a) rejection of claims 28, 74, 75, 104 and 105. The appellant further argues that Sears fails to disclose notifying the customer of a third credit limit while the customer is provided the Second, credit limit. It is true that Sears fails to teach the above-mentioned claimed limitation. However, the secondary reference, Walker compensates for the incomplete teachings of Sears. Walker teaches that "CCI 200 outputs a periodic account statement to inform card holder 112 of the reward offer. The periodic account statement includes the performance target, the target period and the reward terms to induce card holder 112 to behave in a manner prescribed by the credit card issuer and achieve the communicated performance target during the target period. Although the periodic statement of the present embodiment is a written communication between the issuer and the card holder, the communication could take any number of forms including updating a database accessible by the card holder or transmitting an electronic or facsimile representation of a periodic statement, see col.9 lines 42-55, also see fig.6 elements 624 and 628, transmit reward offers to card holders, see col.4 lines 40-65). The examiner maintains that raising the credit limit from one credit limit level to a higher credit limit level is part of the reward offer that, Walker teaches, card issuer extends to the cardholder for keeping their accounts in good standing. Thus since Walker teaches the issuing of a periodic account statement to inform card holder of the reward offer i.e., increased credit limit; lowered APR etc, the examiner further maintains that the issuing of a periodic account statement to inform card holder of the reward offer is akin to notifying the customer of a third credit limit while the customer is provided the

Second credit limit. At least for this reason , Walker certainly teaches the claimed limitation "notifying the customer of a third credit limit while the customer is provided the Second credit limit." Thus, it would have been obvious to combine the teachings of Sears and Walker in order to better manage individual accounts to maximize profit per account.

In response to the appellant's argument concerning the 35 USC 103 (a) rejection of claims 42-46 and 107-116.

The appellant further argues that the examiner fails to address the recitations of claim 42. The examiner maintains that claim 42 recites similar limitation to claim 10, and thus rejected using the same art and rationale as in the rejection of claim 10.

In response to the appellant's argument concerning the 35 USC 103 (a) rejection of claims 37-40.

The appellant further argues that neither Sears nor Walker discloses the claimed limitation "notifying customers of an increased credit limit that will be provided to the customer if the customer satisfies predetermined criteria." Again, contrary to the appellant's assertion, Walker teaches that "CCI 200 outputs a periodic account statement to inform card holder 112 of the reward offer. The periodic account statement includes the performance target, the target period and the reward terms to induce card holder 112 to behave in a manner prescribed by the credit card issuer and achieve the communicated performance target during the target period. Although the periodic statement of the present embodiment is a written communication between the issuer and the card holder, the communication could take any number of forms including

updating a database accessible by the card holder or transmitting an electronic or facsimile representation of a periodic statement, see col.9 lines 42-55, also see fig.6 elements 624 and 628, transmit reward offers to card holders, see col.4 lines 40-65). The examiner maintains that raising the credit limit from one credit limit level to a higher credit limit level is part of the reward offer that, Walker teaches, card issuer extends to the cardholder for keeping their accounts in good standing. Thus since Walker teaches the issuing of a periodic account statement to inform card holder of the reward offer i.e., increased credit limit; lowered APR etc, the examiner further maintains that the issuing of a periodic account statement to inform card holder of the reward offer is akin to notifying the customer of a third credit limit while the customer is provided the Second credit limit. At least for this reason, Walker certainly teaches the claimed limitation "notifying customers of an increased credit limit that will be provided to the customer if the customer satisfies predetermined criteria." The appellant further argues that the prior arts of record fail to teach "resetting the trial period when the activity reflects that the customer has not met the predetermined criteria." Contrary to the applicant's assertion, Walker explicitly states that If the card holder performance value is less than or equal to the first target parameter. That means the card holder has not yet achieved the first performance target , thus a new target parameter (i.e., second parameter) is set for the card holder to reduce the target to enable the cardholder to achieve it (see col.11 lines 1-44). Thus the process, mentioned by Walker, of setting a new target parameter for the card holder after failing to meet the first performance target is akin to the

applicant claimed limitations of "resetting the trial period when the activity reflects that the customer has not met the predetermined criteria."

In response to the appellant's argument concerning the 35 USC 103 (a) rejection of claims 76, 106, and 117. The appellant further argues that the prior arts of record fail to disclose providing to the customer a second credit account associated with second account parameters including a second credit limit. However, Sears mentions that customers are provided with low-credit line starter card as opposed to sears standard card, see lines 17-20. This low-credit line starter card is akin to the second credit account claimed by the applicant. The appellant further argues that neither Sears nor Walker discloses limitation "changing the second interest rate to a third interest rate that is higher than the first interest rate, when it is determined that the customer has made the predetermined number of on-time payments associated with the second credit account." Contrary to the appellant's assertion, Walker discloses the changing of the annual percentage interest rate (APR) from one percentage level to another percentage level (i.e., 19% APR-18%APR, see see table 11, col.9 lines 1-14). Thus it would have been obvious to one of ordinary skill in the art to incorporate the teachings of Walker into the Sears to encourage customers to keep their account in good standing.

In response to the appellant's argument concerning the 35 USC 103 (a) rejection of claims 8, 17, 23, 35, 54, 63, 84, 93 and 99. The appellant further argues that the prior arts of record fail to disclose "determining that the customer has not met a predetermined criteria during the trial period based on the monitoring; and restarting the trial period." However, official notice is taken that it is old and well known in the credit

card business world that if the credit card holder puts his account in poor standing, the credit card account of such a holder would be downgraded i.e., reduced credit limit, higher interest rate etc. For example, In 1997, I applied for my first credit card through MBNA America. On the credit card application, I requested for \$1500 credit limit. However, after my application was processed and approved, the credit limit offered to me was \$800. No sooner had I received the credit card than I called MBNA to find out why they gave me a credit limit of \$800 as opposed to \$1500, their reason was that based on the mechanism they use to extend credit limit to new customers, \$800 was the maximum amount they could extend to me at this time, and that is subject to change with time depending on the standing of my account. For the first six months, my account was in poor standing, and I received a call from MBNA informing me that due to my poor account standing, my APR has been raised and the fact that I was over my credit limit, my charging right has been suspended. I worked tirelessly to bring my account current, and I was able to achieve this in three months. About four months thereafter, I received another call from MBNA, offering to extend my credit limit from \$800 to \$1500, and at the same time reducing my annual APR. This personal story constitutes the applicant disclosure stated supra, which is old and well-known in the art. Thus it would have been obvious to one of ordinary skill in the art to incorporate the old and well known penalties stated supra in Sears to discourage customers from putting their accounts in poor standing.

In response to the appellant's argument concerning the 35 USC 103 (a) rejection of claims 9, 18, 40, 55, 64, 85, and 94. The appellant further argues that the prior arts

of record fail to disclose "determining that the customer has not met a predetermined criteria during the trial period based on the monitoring; preventing use of the starter credit account to purchase goods and/or services; increasing an interest rate associated with the starter credit account; and accessing penalty fees to the starter credit account. However, official notice is taken that it is old and well known in the credit card business world that if the credit card holder puts his account in poor standing, the credit card account of such a holder would be downgraded or even suspended (i.e., reduced credit limit, higher interest rate etc – these are all well known penalties visited on card holders if they put their accounts in poor standing). For example, In 1997, I applied for my first credit card through MBNA America. On the credit card application, I requested for \$1500 credit limit. However, after my application was processed and approved, the credit limit offered to me was \$800. No sooner had I received the credit card than I called MBNA to find out why they gave me a credit limit of \$800 as opposed to \$1500, their reason was that based on the mechanism they use to extend credit limit to new customers, \$800 was the maximum amount they could extend to me at this time, and that is subject to change with time depending on the standing of my account. For the first six months, my account was in poor standing, and I received a call from MBNA informing me that due to my poor account standing, my APR has been raised and the fact that I was over my credit limit, my charging right has been suspended. I worked tirelessly to bring my account current, and I was able to achieve this in three months. About four months thereafter, I received another call from MBNA, offering to extend my credit limit from \$800 to \$1500, and at the same time reducing my annual APR. This

personal story constitutes the applicant disclosure stated supra, which is old and well-known in the art (i.e., downgrading, or even suspending, the credit account if the account is kept in poor standing, which is old and well-known in the art). Thus it would have been obvious to one of ordinary skill in the art to incorporate the old and well known penalties stated supra in Sears to discourage customers from putting their accounts in poor standing.

In response to the appellant's argument concerning the 35 USC 103 (a) rejection of claims 43 and 44. The appellant further argues that the prior arts of record fail to disclose "the method wherein the second predetermined criteria is the same as the predetermined criteria ." However, one of Sears predefined criteria is on time payment. Thus if, during the first trial, Sears starter credit cardholders fail to meet this predefined criterion and Sears choose to give these cardholders a second chance, official notice is taken that the cardholders would be subject to the same predefined criterion they fail to meet in the first trial to see if they would make it in the second trial (this is what second chance is all about). Thus if, during the first trial period, Sears starter credit cardholders make their payments on time, but fail to meet other predefined criteria (i.e., fail to keep their credit limits under control), but if Sears choose to give these cardholders a second chance, official notice is taken that these cardholders would be subject to meet those predefined criteria they fail to meet in the first trial (i.e., keep their credit limits under control). Clearly, in this case, the second predetermined criteria is not the same as the predetermined criteria.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

This examiner's answer contains a new ground of rejection set forth in section **(9)** above. Accordingly, appellant must within **TWO MONTHS** from the date of this answer exercise one of the following two options to avoid *sua sponte* **dismissal of the appeal** as to the claims subject to the new ground of rejection:

(1) **Reopen prosecution.** Request that prosecution be reopened before the primary examiner by filing a reply under 37 CFR 1.111 with or without amendment, affidavit or other evidence. Any amendment, affidavit or other evidence must be relevant to the new grounds of rejection. A request that complies with 37 CFR 41.39(b)(1) will be entered and considered. Any request that prosecution be reopened will be treated as a request to withdraw the appeal.

(2) **Maintain appeal.** Request that the appeal be maintained by filing a reply brief as set forth in 37 CFR 41.41. Such a reply brief must address each new ground of rejection as set forth in 37 CFR 41.37(c)(1)(vii) and should be in compliance with the other requirements of 37 CFR 41.37(c). If a reply brief filed pursuant to 37 CFR 41.39(b)(2) is accompanied by any amendment, affidavit or other evidence, it shall be treated as a request that prosecution be reopened before the primary examiner under 37 CFR 41.39(b)(1).

Extensions of time under 37 CFR 1.136(a) are not applicable to the TWO MONTH time period set forth above. See 37 CFR 1.136(b) for extensions of time to reply for patent applications and 37 CFR 1.550(c) for extensions of time to reply for ex parte reexamination proceedings.

Respectfully submitted,

/OJO O OYEBISI/

Examiner, Art Unit 3696

Conferees:

/THOMAS A DIXON/

Supervisory Patent Examiner, Art Unit 3696

Vincent Millin /vm/

Appeals Practice Specialist

/Wynn W. Coggins/

Director, TC 3600

A Technology Center Director or designee must personally approve the new ground(s) of rejection set forth in section (9) above by signing below:
